

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10851-DPW

THE ALPHAS COMPANY, INC.  
Plaintiff/Defendant-in-Counterclaim,  
v.

AGRICULTURAL EXPRESS OF AMERICA, INC.  
d/b/a CLIPPER CONTROLLED LOGISTICS  
Defendant/Plaintiff-in-Counterclaim.

**PLAINTIFF/DEFENDANT-IN-COUNTERCLAIM'S ANSWER TO  
COUNTERCLAIM OF DEFENDANT/PLAINTIFF-IN-COUNTERCLAIM.**

Plaintiff/Defendant-in-Counterclaim, The Alphas Company, Inc. answers the  
counterclaim of Defendant/Plaintiff-in-Counterclaim as follows:

**PARTIES**

1. The Plaintiff/Defendant-in-Counterclaim is without knowledge or  
information sufficient to admit or deny the allegations of Paragraph 1.
2. The Plaintiff/Defendant-in-Counterclaim is without knowledge or  
information sufficient to admit or deny the allegations of Paragraph 2.
3. The Plaintiff/Defendant-in-Counterclaim admits the allegations of  
Paragraph 3.

**JURISDICTION**

4. The Plaintiff/Defendant-in-Counterclaim denies the allegations of  
Paragraph 4.

**VENUE**

5. The Plaintiff/Defendant-in-Counterclaim admits the allegations of Paragraph 5.

6. The Plaintiff/Defendant-in-Counterclaim denies the allegations of Paragraph 6.

7. The Plaintiff/Defendant-in-Counterclaim is without knowledge or information sufficient to admit or deny the allegations of Paragraph 7.

8. The Plaintiff/Defendant-in-Counterclaim denies the allegations of Paragraph 8.

9. The Plaintiff/Defendant-in-Counterclaim admits it has not paid Clipper its claim and otherwise denies the allegations of Paragraph 9.

**COUNT I**  
**Breach of Contract**

The Plaintiff/Defendant-in-Counterclaim repeats and re-alleges its responses to the allegations of Paragraphs 1 through 9 as if set forth fully herein.

10. The Plaintiff/Defendant-in-Counterclaim denies the allegations of Paragraph 10.

11. The Plaintiff/Defendant-in-Counterclaim denies the allegations of Paragraph 11.

12. The Plaintiff/Defendant-in-Counterclaim denies the allegations of Paragraph 12.

**COUNT I**  
**Quantum Meruit**

The Plaintiff/Defendant-in-Counterclaim repeats and re-alleges its responses to the allegations of Paragraphs 1 through 12 as if set forth fully herein.

13. The Plaintiff/Defendant-in-Counterclaim denies the allegations of

Paragraph 13.

14. The Plaintiff/Defendant-in-Counterclaim denies the allegations of

Paragraph 14.

15. The Plaintiff/Defendant-in-Counterclaim denies the allegations of

Paragraph 15.

16. The Plaintiff/Defendant-in-Counterclaim denies the allegations of

Paragraph 16.

**COUNT III**  
**Account Annexed**

The Plaintiff/Defendant-in-Counterclaim repeats and re-alleges its responses to  
The allegations of Paragraphs 1 through 16 as if set forth fully herein.

17. The Plaintiff/Defendant-in-Counterclaim denies the allegations of

Paragraph 17.

WHEREFORE, Plaintiff/Defendant-in-Counterclaim respectfully requests that the  
counterclaim of Defendant/Plaintiff-in-Counterclaim be dismissed with prejudice, that  
judgment be rendered in its favor and against Defendant/Plaintiff-in-Counterclaim,  
together with costs, fees, and such other and further relief as may be appropriate.

**FIRST AFFIRMATIVE DEFENSE**

The Counterclaim fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Defendant/Plaintiff-in-Counterclaim is estopped by its own conduct from recovering  
in this action.

### **THIRD AFFIRMATIVE DEFENSE**

Provisions of Defendant/Plaintiff-in-Counterclaim's contract and/or Defendant/Plaintiff-in-Counterclaim's conduct are illegal and/or violate public policy and Defendant/Plaintiff-in-Counterclaim's recovery is thereby barred.

### **FOURTH AFFIRMATIVE DEFENSE**

The Plaintiff/Defendant-in-Counterclaim states that the cause of action alleged in the counterclaim of Defendant/Plaintiff-in-Counterclaim was not brought within the time specified in the applicable statutes of limitation and Defendant/Plaintiff-in-Counterclaim is therefore barred from recovery.

### **FIFTH AFFIRMATIVE DEFENSE**

Defendant/Plaintiff-in-Counterclaim has failed to perform as required by the contract and therefore is prohibited from enforcing the terms of the contract.

### **SIXTH AFFIRMATIVE DEFENSE**

The Plaintiff/Defendant-in-Counterclaim entered into the agreement referred to in the Complaint as a result of false and/or fraudulent representations made by the Defendant/Plaintiff-in-Counterclaim upon which defendant relied in entering into the contract.

### **SEVENTH AFFIRMATIVE DEFENSE**

Defendant/Plaintiff-in-Counterclaim, by its conduct, has waived the right to enforce the terms of the agreement referred to in the Complaint.

### **EIGHTH AFFIRMATIVE DEFENSE**

The Plaintiff/Defendant-in-Counterclaim limited its liability and Defendant/Plaintiff-in-Counterclaim's recovery is therefore barred.

### **NINTH AFFIRMATIVE DEFENSE**

Defendant/Plaintiff-in-Counterclaim failed to present a proper claim and Defendant/Plaintiff-in-Counterclaim's recovery is therefore barred.

**TENTH AFFIRMATIVE DEFENSE**

The Plaintiff/Defendant-in-Counterclaim states that Defendant/Plaintiff-in-Counterclaim's claim was not brought within the time specified in the applicable contract and the Defendant/Plaintiff-in-Counterclaim's recovery is therefore barred.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Defendant/Plaintiff-in-Counterclaim's damage or injury was caused by the Defendant/Plaintiff-in-Counterclaim's violation of law, statute or other regulation enacted to govern the conduct of the parties at the time and place of the alleged accident.

**TWELFTH AFFIRMATIVE DEFENSE**

The harm, if any, suffered by the Defendant/Plaintiff-in-Counterclaim was caused by one for whose conduct the Plaintiff/Defendant-in-Counterclaim is not legally responsible and the Defendant/Plaintiff-in-Counterclaim's recovery is thereby barred.

**THIRTEENTH AFFIRMATIVE DEFENSE**

This court lacks jurisdiction over Plaintiff/Defendant-in-Counterclaim.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The Defendant/Plaintiff-in-Counterclaim failed to mitigate its damages, and it is therefore barred from recovery against the Plaintiff/Defendant-in-Counterclaim.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The Plaintiff/Defendant-in-Counterclaim states that the damages, if incurred, were due to the acts or faults of a third party, for which the third party defendant is not liable.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The Plaintiff/Defendant-in-Counterclaim states that the liability of the Plaintiff/Defendant-in-Counterclaim, if any, is limited.

WHEREFORE, Plaintiff/Defendant-in-Counterclaim respectfully requests that the counterclaim of the Defendant/Plaintiff-in-Counterclaim be dismissed with prejudice, that judgment be rendered in its favor and against Defendant/Plaintiff-in-Counterclaim, together with costs, fees, and such other and further relief as may be appropriate.

**JURY DEMAND**

The Plaintiff/Defendant-in-Counterclaim, The Alphas Company, Inc., hereby demands a trial by jury as to all issues and claims so triable.

Respectfully submitted,  
The Alphas Companies, Inc.  
By its attorney,

s/ Andrew J. Fay

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Andrew J. Fay, Esquire (BBO #550058)  
Tobin, Sullivan, Fay & Grunebaum  
Wellesley Office Park  
60 William Street  
Wellesley, MA 02481  
(781) 237-0877